THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.7334 OF 2007

DATED 13.04.2007

BETWEEN:

The Fishermen Cooperative Society, Kajuluru rep.by its President Ratcha Lova Raju

… Petitioners

AND

Sri V.Suryanarayana, S/o Ganganna, Dugguduru Village, Kajuluru Mandal, East Godavari District and another.

… Respondents

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ORDER:

Fishermen Cooperative Society (hereafter called, the Society), Kajuluru Village and Mandal in East Godavari District, filed the writ petition assailing the order of the Government of Andhra Pradesh, dated 16.03.2007. The main grievance of the petitioner Society is assignment of land to first respondent made in 1978 by the then Tahsildar.

First respondent is an ex-service man. He was assigned land admeasuring Acs.2.50 in survey No.169/2 situated at Dugguduru village o f Kajuluru Mandal. The petitioner herein challenged the assignment before the Commissioner of Land Revenue, who dismissed the Revision on 27.07.1982 before this Court. By order, dated 06.07.1987, this Court disposed of the writ petition giving liberty to the petitioner to prefer a Revision before the Government, who by Memorandum No.2101/Asn.I(2)/87-13, dated 03.12.1998 remanded the matter to the District Collector, East Godavari District. The second respondent then filed W.P.No.25899 of 1999 assailing the Government Memo, dated 03.12.1998. The main contention was that the Government did not give any opportunity to him while remanding the matter to the District Collector at the behest of the petitioner. Accepting the plea of the first respondent that he had no opportunity, this Court set aside the said Memo and remanded the matter to the Government of Andhra Pradesh to pass orders on the Revision petition filed by the petitioner Society after obtaining the

status report from the District Collector. In obedience thereto, now the Government passed orders in proceedings No.47292/Assign.VI/2005, dated 16.03.2007. This is assailed in the writ petition seeking a writ of Mandamus declaring the same as illegal and arbitrary.

Learned counsel for petitioner raised the following grounds in support of writ petition. The land in survey No.169/2 is classified as watercourse being a creek and therefore, the same cannot be assigned under Board Standing Orders (BSO) No.15. He placed reliance on the decision of this Court in **Katuri Mahalaxmamma v Special Commissioner of Land Revenue**[1]. Secondly, he submits that some of the members of the petitioner Society were entered as sivai jamadars in revenue accounts, that they were cultivating the land, whenever water recedes in the creek and whenever the creek is filled with water, they were fishing in the water, and therefore, revenue authorities ought to have granted preference in the matter of assignment of the said land. Nextly, he contends that the petitioner Society made applications to the District Collector for assignment of land and even while they were pending, assignment was granted to the first respondent. Lastly, learned counsel would submit that the land was assigned to the first respondent while he was working in the Army and therefore, he is not ex-serviceman and that he is a rich man not entitled for assignment. **Opposing** the writ petition, learned Assistant Government Pleader for Revenue (Assignment) submits that the Government passed the impugned order after considering the report of the District Collector vide letter No.E5/SCB/2/2001, dated 18.10.2005, and all the submissions made by petitioner before the Government were considered and rejected, and no interference is called for.

He also points out that on one hand, petitioner is opposing the assignment of land to first respondent but on the other hand, petitioner itself is claiming assignment of land in its favour or in favour of its members, which would belie the contention that it is a water body.

There is no dispute that first respondent is an ex-serviceman. Nonetheless, the objection for assignment of land to him is two-fold - that he is a rich man and that when the land was assigned in 1978, he was working in the Army and he is not an ex-service man. Both these submissions are devoid of any merit. The Government of Andhra Pradesh issued G.O.Ms.No.743, dated 30.04.1963 is to the effect that all jawans domiciled in Andhra Pradesh and serving in the Defense Forces would be eligible for assignment of land in their own villages or elsewhere. Not only a serving jawan but in the case of death of jawan, his legal heirs are also entitled for assignment of land. Therefore, the assignment of land to first respondent while he was in Army cannot be treated as irregular. Secondly, petitioner has not placed before this Court

any order of the Government or Board of Revenue prohibiting the assignment of land to a person who is serving in the Defense Forces. Lastly, being a jawan or person serving the Army is relevant for seeking assignment and not the question that such person is/is not rich or poor. As per G.O.Ms.No.743, dated 30.04.1963, no distinction is made between the poor jawan and rich jawan to seek assignment. The objection of petitioner Society that the land in survey No.169/2 of Dugguduru Village is part of the creek and cannot be assigned under para 10 of BSO 15 is also without substance. No material is placed before this Court. Indeed, as seen from the impugned order passed by the Government, the petitioner contended before the Government that if the assignment is made in favour of first respondent, he will close a flowing drain depriving the fishermen of their livelihood. This was rejected by Government observing that the land was assigned to first respondent in 1978. This Court does not find any infirmity in the said finding especially when the petitioner itself contends that their application for assignment was not considered. When the petitioner itself sought assignment of land in survey No.169/2, this Court fails to understand what could be the objection for assignment of land to first respondent, who is admittedly an ex-serviceman. Even otherwise, as held by the Supreme Court in **Susetha v State of Tamil Nadu**[2], a water body, which is in disuse and not being put to use as such, can always be used for other purposes. In the absence of any material likely revenue record showing the assigned land as a water creek, no further debate on this point would be necessary. The submission that 'Order of Preference' was not followed cannot be a ground for denying the assignment to first respondent. This point has not been substantiated by petitioner by placing necessary material that their applications were made earlier to application of first respondent. Ultimately, except making a bald allegation that the Members of petitioner Society were fishing in the creek, no evidence is forthcoming.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

13.04.2007.
pln

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[1] 2002 Suppl. (1) ALD 273 (DB)

[2] (2006) 6 SCC 543